

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEC 20 2001

BERNICE E. RAINS and
ANITA HYCHE RAINS,

Plaintiffs,

vs.

JANI-KING OF NASHVILLE, INC.,

Defendant.

Civil No. 3:01-CV-1778-H

PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

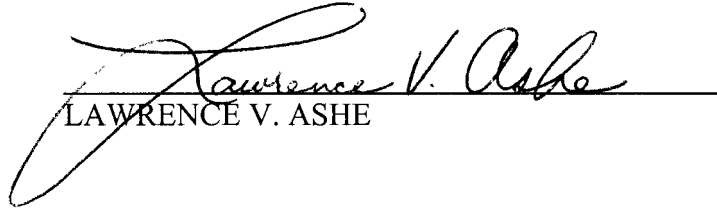
Plaintiffs, BERNICE E. RAINS and ANITA L. HYCHE-RAINS

(hereinafter collectively "the Rainses"), through undersigned counsel and pursuant to Fed. R. Civ. P. 12(c), move for partial judgment on the pleadings against Defendant JANI-KING OF NASHVILLE, INC. (hereinafter "JKN") on its second affirmative defense (failure to state a claim under which relief can be granted), third affirmative defense (unclean hands) and fifth affirmative defense (lack of standing), on the respective bases that the Complaint adequately sets forth all of the essential elements of the claims asserted, the unclean hands defense only applies to equitable claims and Plaintiffs are consumers with standing under the Texas Unfair and Deceptive Trade Practices Act (Count II). These defenses fail as a matter of law as detailed in Plaintiffs' accompanying brief in support of this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Motion for Partial Judgment on the Pleadings was furnished by facsimile and U.S. mail this 17th day of December, 2001, to DAVID G. CABRALES, ESQ., and JASON S. LEWIS, ESQ., Locke Liddell & Sapp, LLP, Attorneys for Defendants, 2200 Ross Avenue, Suite 2200, Dallas, TX 75201-6776.


LAWRENCE V. ASHE

WHEREFORE, Plaintiffs, BERNICE E. RAINS and ANITA L. HYCHE-
RAINS, request that this Court enter an order granting this motion for partial
judgment on the pleadings.

Respectfully submitted,



LAWRENCE V. ASHE

Admitted Pro Hac Vice

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